

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	CRIMINAL NO. _____
vs.	)	
	)	Title 18,
JOSEPH D. CASTELLANO,	)	United States Code,
	)	Sections 2, 371, 982(a)(2)(A), and 1343.
and	)	
	)	
THE JOSEPH DANIEL COMPANY,	)	
	)	
Defendants.	)	

**INDICTMENT**

**THE GRAND JURY CHARGES:**

**COUNT 1**

**CONSPIRACY TO COMMIT WIRE FRAUD**

**A. Introduction and Background to the Conspiracy**

At all times relevant to the Indictment:

1. **THE JOSEPH DANIEL COMPANY**, also known as **J.D. & COMPANY**, (hereinafter referred to as "**J.D. & COMPANY**") was an Illinois corporation engaged in the business of marketing and building new single family residences in the Metro East Illinois area, including St. Clair and Madison Counties. **J.D. & COMPANY**'s principal place of business was located at 5109 N. Illinois, Fairview Heights, Illinois, having moved there from 407 East Lincoln, Belleville, Illinois during 1998.

2. The defendant, **JOSEPH D. CASTELLANO** was the president and operator of **J.D. & COMPANY**, and as such would and did participate in the exercise of authority and control over the day to day business and operating decisions of the company.

3. Monte J. Castellano, is a certified public accountant and the son of defendant, **JOSEPH D. CASTELLANO**. During in or about November, 1996, Monte J. Castellano began employment with **J.D. & COMPANY**. During in or about February, 1997, **J.D. & COMPANY** was incorporated in the State of Illinois by **JOSEPH D. CASTELLANO** and Monte J. Castellano.

4. Old Exchange National Bank of Okawville (hereinafter referred to as "Old Exchange") is located in Okawville, Illinois. **J.D. & COMPANY** had an established relationship with Old Exchange through defendant **JOSEPH D. CASTELLANO**. Old Exchange made construction loans to a number of **J.D. & COMPANY**'s new home customers. Old Exchange received a fee equal to 1% of the loan amount for making each construction loan.

5. Metro East Title Corporation (hereinafter referred to as "Metro East Title") has its principal place of business at 407 East Lincoln, Belleville, Illinois. **J.D. & COMPANY** had an established relationship with Metro East Title through defendant **JOSEPH D. CASTELLANO**. Metro East Title acted as an escrow and disbursing agent for Old Exchange relative to the bank's construction loans to **J.D. & COMPANY**'s new home customers, and Metro East Title issued title insurance to **J.D. & COMPANY**'s new home customers. Metro East Title received a fee equal to 1/2% of the loan amount for serving as disbursing agent, along with other fees for closing and issuing the title insurance.

6. **J.D. & COMPANY** marketed, sold, and built new single family residences, advertising low down payments and low closing costs. Interested individuals initially entered into construction contracts with **J.D. & COMPANY**. **J.D. & COMPANY** then developed an acceptable home design, and directed the customer to Old Exchange for a six month construction loan. **J.D. & COMPANY** assisted customers in the preparation of their loan application and related paperwork, including obtaining a pre-construction appraisal report, a credit report, a permanent financing commitment, and a flood letter necessary to obtain the Old Exchange construction loan. **J.D. & COMPANY** also directed the customer to Metro East Title for title insurance. Furthermore, **J.D. & COMPANY** referred Old Exchange to Metro East Title for escrow and disbursement services relative to all of its customers' construction loans.

7. As part of each of **J.D. & COMPANY**'s construction contracts, the new home customer agreed to a construction loan disbursement schedule. This disbursement schedule allowed **J.D. & COMPANY** to draw one-third of the customer's construction loan upon the closing of the construction loan, one-third of the customer's construction loan when the new home was "weather tight", and the final one-third of the customer's construction loan upon completion of construction. It was a further part of the construction contract that the new home customer authorized **J.D. & COMPANY** to make draws on the customer's construction loan, without the new home customer's prior approval, "upon completed work" as set forth in the above-referenced disbursement schedule.

8. In order to draw on each customer's construction loan, **J.D. & COMPANY**, at the direction of **JOSEPH D. CASTELLANO**, acting with Monte J. Castellano, sent via telephone facsimile transmission to Metro East Title a form entitled "Escrow Draw Borrower' Release". On

this form **J.D. & COMPANY**, by and through **JOSEPH D. CASTELLANO**, acting with Monte J. Castellano, who signed these forms and, as part of the construction contract requested funds on behalf of each particular borrower, represented to Metro East Title that a particular stage of work was completed on the referenced customer's home such that Metro East Title, as disbursing agent, could authorize Old Exchange to disburse the appropriate construction loan funds. Once Old Exchange had disbursed the particular construction loan funds to a Metro East Title account, Metro East Title would then issue a check in that amount to **J.D. & COMPANY**.

B. Manner and Means of the Conspiracy

9. During the period of the conspiracy, the defendants **JOSEPH D. CASTELLANO** and **J. D. & COMPANY**, acting with Monte J. Castellano, solicited new home customers through television and newspaper advertisements offering new home construction with little if any down payment and closing costs.

10. **JOSEPH D. CASTELLANO** and **J. D. & COMPANY**, acting with Monte J. Castellano, directed new home customers to Old Exchange, with whom they had a established relationship, for construction loans because **JOSEPH D. CASTELLANO, J. D. & COMPANY**, and Monte J. Castellano knew and believed that Old Exchange would not question **J.D. & COMPANY's** construction loan draw requests, would not require lien waivers from subcontractors purportedly performing the construction work on the new homes, and would only conduct sporadic and rare inspections of the new home construction sites to verify work completion.

11. **J.D. & COMPANY**, at the direction of **JOSEPH D. CASTELLANO**, acting with Monte J. Castellano, put together the construction loan application packages for each new home customer and submitted the application packages to Old Exchange.

12. In connection with the loan application packages, and in order for Old Exchange to issue the construction loans, **J.D. & COMPANY**, at the direction of **JOSEPH D. CASTELLANO**, acting with Monte J. Castellano, obtained pre-construction home appraisals for each new home customer. **JOSEPH D. CASTELLANO** and **J.D. & COMPANY**, acting with Monte J. Castellano, utilized Southwestern Illinois Real Estate Services to perform the appraisals because they knew and believed that each appraisal would reflect a home value at least 20% greater than the actual loan amount of the home.

13. In connection with the loan application packages, and in order for Old Exchange to issue the construction loans, **J.D. & COMPANY**, at the direction of **JOSEPH D. CASTELLANO**, acting with Monte J. Castellano, requested and obtained commitments to issue permanent financing for each new home customer from companies including American Mortgage Group, Inc. of Belleville, Illinois.

14. In connection with the loan application packages, and in order for Old Exchange to issue the construction loans, **J.D. & COMPANY**, at the direction of **JOSEPH D. CASTELLANO**, acting with Monte J. Castellano, requested and obtained credit reports for each new home customer from companies including Accurate Credit Services, Inc. of Largo, Florida.

15. In connection with the loan application packages, and in order for Old Exchange to issue the construction loans, **J.D. & COMPANY**, at the direction of **JOSEPH D. CASTELLANO**,

acting with Monte J. Castellano, obtained Federal Emergency Management Agency Standard Flood Hazard Determination reports, commonly referred to as "Flood Letters", from companies including Horizon Certification Services of San Antonio, Texas and First American Flood Data Services, Inc. of Austin, Texas. At the direction of **JOSEPH D. CASTELLANO**, acting with Monte J. Castellano, applications for these "Flood Letters" were sent by telephone facsimile transmission from **J.D. & COMPANY**'s offices in St. Clair County, Illinois, within the Southern District of Illinois, to both Horizon Certification Services' offices in San Antonio, Texas and First American Flood Data Services, Inc.'s offices in Austin, Texas.

16. **JOSEPH D. CASTELLANO** and **J.D. & COMPANY**, acting with Monte J. Castellano, directed new home customers to Metro East Title, with whom they had a established relationship, for title services, including title insurance, escrow services, and disbursement services, because they knew and believed that Metro East Title would not question **J.D. & COMPANY**'s construction loan draw requests, would not require lien waivers from subcontractors purportedly performing the construction work on the new homes, and would not conduct periodic inspections of the new home construction sites to verify work completion.

17. **JOSEPH D. CASTELLANO** and **J.D. & COMPANY**, acting with Monte J. Castellano, made or caused to be made false representations to new home customers that Metro East Title and Old Exchange would not disburse the customers' construction loan funds to **J.D. & COMPANY** until Metro East Title and Old Exchange had verified, through site visits and review of subcontractor lien waivers, that the appropriate stage of work had been completed when, in fact, as **JOSEPH D. CASTELLANO**, and **J.D. & COMPANY**, and Monte J. Castellano well knew,

neither Metro East Title nor Old Exchange took any steps to verify their representations as to work completion before disbursing construction loan funds to **J.D. & COMPANY**.

18. **JOSEPH D. CASTELLANO** and **J.D. & COMPANY**, acting with Monte J. Castellano, utilized a construction contract in connection with their sales of new homes in which each new home customer authorized **J.D. & COMPANY** to make draws on that customer's construction loan, without the new home customer's prior approval, "upon completed work" as set forth in the contract's disbursement schedule.

19. **JOSEPH D. CASTELLANO** and **J.D. & COMPANY**, acting with Monte J. Castellano, made or caused to be made false representations on one or more "Escrow Draw Borrower' Release" forms that a particular stage of work was completed on the referenced customer's home in order that Metro East Title, as disbursing agent, would authorize Old Exchange to disburse the appropriate construction loan funds. **JOSEPH D. CASTELLANO** and **J.D. & COMPANY**, and Monte J. Castellano, well knew that the representations made on these "Escrow Draw Borrower' Release" forms were false and that the represented stage of completion had not, in fact, been achieved. These "Escrow Draw Borrower' Release" forms were sent by telephone facsimile transmission from **J.D. & COMPANY**'s offices to the offices of Metro East Title in Belleville, Illinois. They were then sent by telephone facsimile transmission from the offices of Metro East Title to Old Exchange in Okawville, Illinois.

20. **JOSEPH D. CASTELLANO** and **J.D. & COMPANY**, acting with Monte J. Castellano, engaged in a *Ponzi* scheme, in that they utilized construction loan funds disbursed by Old Exchange and Metro East Title to **J.D. & COMPANY** to pay subcontractors and material providers

for work performed and materials supplied for previously constructed new homes, instead of for the specific new customers' homes the disbursed loan funds were actually intended for.

21. **JOSEPH D. CASTELLANO** and **J.D. & COMPANY**, acting with Monte J. Castellano, failed to pay one or more subcontractors and material providers for work performed and materials supplied on **J.D. & COMPANY**'s new customers' homes, despite having received construction loan funds from Old Exchange to make such payments.

22. **JOSEPH D. CASTELLANO** and **J.D. & COMPANY**, acting with Monte J. Castellano, misappropriated for personal use and unrelated business purposes construction loan funds which had been disbursed to **J.D. & COMPANY** by Old Exchange for the construction of customers' homes.

23. During in or about the week of September 27, 1999, **JOSEPH D. CASTELLANO**, acting with Monte J. Castellano, closed the offices of **J.D. & COMPANY** and fled to Florida from the Southern District of Illinois. At that time, they left approximately twenty-seven (27) customers' homes in various stages of completion, having already drawn down substantially all of the customers' construction loan funds, totalling approximately \$3,000,000.00. They also owed approximately \$500,000.00 to subcontractors and material providers who had performed work and provided materials relative to these homes. Thus, approximately twenty-seven (27) customers were left with no finished new homes, substantial balances due and owing to Old Exchange on their construction loans which had been fully or partially disbursed, and substantial subcontractor and material provider liens on the portions of their new homes which had actually been completed.



C. The Conspiracy

24. From on or about and between January 1, 1999, and continuing through at least October 1, 1999, both dates being approximate and inclusive, within St. Clair and Madison Counties in the Southern District of Illinois and elsewhere,

**JOSEPH D. CASTELLANO and  
J.D. & COMPANY**

defendants herein, together with Monte J. Castellano and others unknown to the Grand Jury, did unlawfully, willfully, and knowingly combine, conspire, confederate and agree among themselves and each other to commit certain offenses against the United States, that is: the defendants and Monte J. Castellano devised a scheme to defraud **J.D. & COMPANY**'s new home customers and, for the purpose of executing the scheme to defraud, which affected a financial institution, did transmit and cause to be transmitted in interstate commerce, by means of a wire communication, certain signals, that is, documents sent by facsimile transmission originating in the Southern District of Illinois and being received by entities and individuals in Florida and Texas, in violation of Title 18, United States Code, Sections 2 and 1343; all in violation of Title 18, United States Code, Section 371.

D. Overt Acts in Furtherance of the Conspiracy

25. In furtherance of the conspiracy and to achieve the objects thereof, the defendants and their co-conspirators, known and unknown to the Grand Jury, committed and caused to be committed the following overt acts in the Southern District of Illinois and elsewhere:

26. During in or about April, 1999, **JOSEPH D. CASTELLANO** met with new home buyers Richard and Karen Lovell. During this meeting, **JOSEPH D. CASTELLANO** falsely

represented to the Lovells that Old Exchange would not disburse the Lovell's construction loan funds to **J.D. & COMPANY** until completion of the construction on their new home as set forth in their construction loan disbursement schedule.

27. During in or about May, 1999, **JOSEPH D. CASTELLANO** met with new home buyer Angela Chaney. During this meeting, **JOSEPH D. CASTELLANO** falsely represented to Ms. Chaney that Old Exchange would not disburse Ms. Chaney's construction loan funds to **J.D. & COMPANY** until completion of the construction on her new home as set forth in her construction loan disbursement schedule. Further, **JOSEPH D. CASTELLANO** falsely represented that **J.D. & COMPANY** had to submit construction receipts to Metro East Title before Metro East Title would authorize Old Exchange to disburse additional construction loan funds to **J.D. & COMPANY**.

28. During in or about August, 1999, **JOSEPH D. CASTELLANO** met with new home buyers Earl and Patricia Smith. During this meeting, **JOSEPH D. CASTELLANO** falsely represented to the Smiths that Old Exchange would not disburse the Smith's construction loan funds to **J.D. & COMPANY** until completion of the construction on their new home as set forth in their construction loan disbursement schedule.

29. During in or about September, 1999, **JOSEPH D. CASTELLANO** met with new home buyers Stephen and Martha Bausano. During this meeting, **JOSEPH D. CASTELLANO** falsely represented to the Bausanos that Old Exchange would not disburse the Bausano's construction loan funds to **J.D. & COMPANY** until completion of the construction on their new home as set forth in their construction loan disbursement schedule.

30. During in or about September, 1999, **JOSEPH D. CASTELLANO** met with new home buyer Russell Edsall. During this meeting, **JOSEPH D. CASTELLANO** falsely represented to Mr. Edsall that Old Exchange would not disburse Mr. Edsall's construction loan funds to **J.D. & COMPANY** until completion of the construction on his new home as set forth in his construction loan disbursement schedule. Further, **JOSEPH D. CASTELLANO** falsely represented that Mr. Edsall's construction loan funds would be held in escrow and only used to pay construction bills as the work was completed.

31. On or about April 23, 1999, **JOSEPH D. CASTELLANO** sent by telephone facsimile transmission to Metro East Title an Escrow Draw Borrower Release form requesting the disbursement to **J.D. & COMPANY** of \$28,440.00 relative to new home buyer Ann Baugus' construction loan, falsely representing that the third stage of construction as set forth in her construction loan disbursement schedule had been completed.

32. On or about September 24, 1999, **JOSEPH D. CASTELLANO** sent by telephone facsimile transmission to Metro East Title an Escrow Draw Borrower Release form requesting the disbursement to **J.D. & COMPANY** of \$30,450.00 relative to new home buyers John and Kathy Colon's construction loan, falsely representing that the third stage of construction as set forth in their construction loan disbursement schedule had been completed.

33. On or about February 19, 1999, a Flood Certification Request Form relative to a new home to be built for **J.D. & COMPANY** customers John and Cynthia Palisch was sent by telephone facsimile transmission from the offices of **J.D. & COMPANY** in Fairview Heights, Illinois to the offices of Horizon Certification Services in San Antonio, Texas.

**COUNT 2**

**WIRE FRAUD**

34. Beginning in or about and between January 1, 1999, and continuing through at least October 1, 1999, both dates being approximate and inclusive, within St. Clair and Madison Counties in the Southern District of Illinois and elsewhere, defendants

**JOSEPH D. CASTELLANO and  
J.D. & COMPANY,**

together with Monte J. Castellano and others unknown to the Grand Jury, devised, intended to devise, and knowingly participated in a scheme to defraud, which affected a financial institution, and to obtain money from new home customers, by failing to complete construction on their homes and by failing to pay laborers and material suppliers after drawing down their construction loans, in an amount in excess of \$2,000,000.00, by means of materially false and fraudulent pretenses, representations, and promises.

35. The Grand Jury realleges and incorporates by reference, as if fully set forth herein, the allegations contained within paragraphs 1 - 23, and 26 - 33 of Count 1 of this Indictment.

36. On or about February 19, 1999, within St. Clair County in the Southern District of Illinois, the defendants **JOSEPH D. CASTELLANO** and **J.D. & COMPANY**, acting with Monte J. Castellano and others, for the purpose of executing the foregoing scheme, did knowingly cause to be transmitted by means of wire communication in interstate commerce, between the offices of **J.D. & COMPANY** in Fairview Heights, Illinois and the offices of Horizon Certification Services in San Antonio, Texas, certain signs and sounds consisting of electronic communications, including

a Flood Certification Request Form relative to a new home to be built for **J.D. & COMPANY** customers John and Cynthia Palisch.

All in violation of Title 18, United States Code, Sections 1343 and 2.

**COUNT 3**

37. The Grand Jury alleges and incorporates by reference, as if fully set forth herein, the allegations contained within paragraphs 1-36 of this Indictment.

38. The violations described in Counts 1 and 2 of this Indictment affected a financial institution, namely the Old Exchange National Bank of Okawville, Okawville, Illinois.

39. As a result of the offenses alleged in Counts 1 and 2 of the Indictment,

**JOSEPH D. CASTELLANO and  
J.D. & COMPANY,**

defendants herein, shall forfeit to the United States any property constituting, or derived from, proceeds said defendants obtained directly or indirectly, as the result of said violation, including but not limited to:

- a. Proceeds in the amount of at least \$2,000,000.00
- b. \$155,843.82 in funds seized by the Federal Bureau of Investigation from Account # 5811 in the name of **J.D. & COMPANY** at the Old Exchange National Bank, Okawville, Illinois;
- c. \$101,787.67 in funds seized by the Federal Bureau of Investigation from Certificate of Deposit # 14698 in the name of **J.D. & COMPANY** at the Old Exchange National Bank, Okawville, Illinois;

d. \$10,148.92 in funds seized by the Federal Bureau of Investigation  
from Account # 5851 in the name of **J.D. & COMPANY** at the Old  
Exchange National Bank, Okawville, Illinois;  
all in violation of Title 18, United States Code, Section 982(a)(2)(A).

**A TRUE BILL**

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FOREPERSON

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W. CHARLES GRACE  
United States Attorney

Recommended Bond: JOSEPH D. CASTELLANO - \$100,000.00 Secured